

**REPORT ON ELECTRIC RESTRUCTURING  
OF THE ARKANSAS PUBLIC SERVICE COMMISSION TO THE  
JOINT INSURANCE AND COMMERCE COMMITTEE**

*August, 2000*

The "Electric Consumer Choice Act of 1999", or Act 1556 of 1999 ("the Act"), was signed by the Governor on April 15, 1999. Act 1556 provides the framework to implement open access to competitive sources of electricity for consumers in the state by January 1, 2002. The Public Service Commission has begun the work required by the Act to open the electricity market to competition in Arkansas. This report describes the activities being undertaken by the Commission to achieve the goal of competitive electric markets in Arkansas, the activities the Commission is participating in before the Federal Energy Regulatory Commission ("FERC"), and other activities. Information regarding Commission activities, including the timeline discussed below, can be found on the Commission Internet website at <http://www.state.ar.us/psc/>.

*Docket No. 99-117-A (Act 1556 Implementation Timeline)*

On May 11, 1999, the Commission initiated Docket No. 99-117-A. This administrative docket was initiated for the purpose of developing a comprehensive timeline for realizing an open, competitive market for electricity generation in Arkansas. On June 10, 1999, the Executive Director filed the *First Report and Proposed Act 1556 Timeline ("Timeline1")*.

On February 3, 2000, the Executive Director filed the *Second Report and Proposed Act 1556 Timeline "Timeline2"*. In *Timeline2*, the Executive Director modified *Timeline1* to more appropriately reflect the work that will be undertaken given that much of the docket activities are related.

The Commission intends that *Timeline2* be utilized as a "roadmap" to competition and that this tool can be used by all parties who follow the Commission's implementation of the Act. However, it is anticipated that this "roadmap" will be modified in the future in order to ensure a smooth transition to a competitive market for electricity.

*Docket No. 99-152-R (Guidelines for Unbundling Rates & Tariffs)*

A rulemaking proceeding on developing unbundling guidelines was initiated by the Commission on June 15, 1999. Subsequently, Staff filed its Proposed Unbundling Guidelines that should be followed by

jurisdictional electric utilities for functionally unbundling their rates. After responses to the staff's proposed guidelines were received from a number of parties, including Entergy Arkansas Inc. ("EAI"), Southwestern Electric Power Company ("SWEPCO"), the electric cooperatives, the Arkansas Electric Energy Consumers ("AEEC"), and the Attorney General ("AG"), a public hearing was held on July 27, 1999. On October 1, 1999, the Commission adopted rules containing unbundling guidelines that must be used by all companies to develop their proposed unbundled rates. These guidelines require the companies to file proposed rates that are functionally unbundled into generation, transmission, distribution, and customer service components. The Docket was closed by the Commission in February, 2000.

The Commission also initiated separate dockets for each company's proposed unbundled rates to be evaluated. Most of the electric utilities in the state have filed their initial proposal for unbundling their rates as required by the Act. The General Staff has been reviewing these filings to determine if they comply with the unbundling guidelines. Company specific hearings on these initial filings are in progress.

*Docket No. 99-229-R (Guidelines to Address Recovery of Transition Costs)*

The Act provides that certain costs incurred because of the transition from a monopoly industry to a competitive industry can be recovered over a three year period following the advent of retail choice. Transition costs cannot include any costs expected to be recoverable in a competitive market or otherwise recoverable in distribution rates or transmission rates. The Commission initiated this proceeding August 26, 1999, to develop the guidelines and procedures for a company to utilize to request recovery of transition costs. After comments on the proposed guidelines were received from a number of parties, a hearing was held in this docket on October 19, 1999. The Commission, on January 27, 2000, adopted guidelines to be used to request recovery of transition costs by a utility. This Docket was closed by the Commission on April 5, 2000.

*Docket No. 99-279-R (Proceeding to Establish Electric Affiliate Rules, Regulations for Functionally Separated Business Activities, and Standards of Conduct)*

On September 30, 1999, the Commission initiated this proceeding to develop the rules that must be followed by affiliate companies and to establish appropriate standards of conduct. These rules are to ensure that transactions between a regulated utility and its unregulated affiliates or corporate divisions are conducted at arm's length to guard against discriminatory conduct.

The Staff filed proposed affiliate transaction rules on November 1, 1999. Comments were filed by a number of parties including EAI, SWEPCO, the electric cooperatives, Nucor-Yamato Steel Company,

Reliant Energy, Arkansas Western Gas ("AWG"), Enron, and the AG. On January 7, 2000, the Commission issued an order asking parties to address certain issues in the docket that were not adequately addressed in these initial comments. A hearing on the issues in this docket took place on February 16, 2000. On March 14, the Commission issued an order in which substantive modifications were made to the rules proposed by Staff. The Commission has requested written comments on these modified rules. A hearing was held on April 20 regarding the modified proposed rules.

On May 17, the Commission issued an order which further modified the proposed rules and invited comments on these rules. After receiving comments, the affiliate transaction rules were adopted by the Commission on June 9, 2000.

On August 8, 2000, all electric utilities filed with the Commission their plans to functionally unbundle their business activities pursuant to §23-19-205(b) and (c) and Rule 3.01.A. of the Commission's Electric Affiliate Transaction Rules. These filings are currently under review.

*Docket No. 99-290-R (Proceeding to Establish Licensing Requirements for  
Energy Service Providers and Aggregators)*

Under the Act, the Commission is to establish rules and procedures for licensing energy service providers and aggregators ("ESPs"). This docket was initiated on October 15, 1999, for the development of such rules and procedures, with the dual goal of encouraging entry into the Arkansas market by interested energy providers while providing adequate protection for consumers. Staff filed proposed rules on November 1, 1999. Initial comments were filed on January 10, 2000 by EAI, SWEPCO, Reliant Energy, Nucor-Yamato Steel Company, Oklahoma Gas and Electric ("OG&E"), the electric cooperatives, and the A G. Reply comments were filed on February 4, 2000. A hearing on the issues in this proceeding was held on February 15, 2000. Order No. 6, which adopted the requirements for licensing ESPs, was filed on March 31, 2000. On June 30, Staff filed an ESP license application and an ESP annual report form as directed by the Commission in Order No. 6.

*Proceedings Related to Stranded Costs*

Docket No. 99-372-U

Many of the proceedings required by the Act are generic in nature and some proceedings are initially generic but become company-specific. Other proceedings, such as stranded cost determinations, are strictly company-specific. Pursuant to Section 23-19-301(a) of the Act, each utility that intends to seek recovery of

stranded costs must file notice with the Commission of its intent to do so by December 31, 1999. The only utility to file a notice of intent was EAI. This notification begins the process for the determination by the Commission of the level of stranded costs. This process will continue with Commission consideration of proposed steps for mitigating stranded costs and determination of the level of stranded costs that will be recoverable by EAI. Staff and EAI are discussing issues relating to EAI's initial filing which includes a proposed valuation methodology for estimating the level of stranded costs.

#### Docket No. 98-114-U

Docket No. 98-114-U is the procedural forum used by EAI to report annually to the Commission its current level of excess earnings. The excess earnings as determined by the Commission, plus interest, are credited to a "transition cost account." Funds in this account are to be used to pay down EAI's stranded costs as determined by the Commission. If any of these funds are not needed for stranded cost recovery, they will be returned to ratepayers through refunds, rate reductions, or a combination of the two.

For 1997, \$41.249 million at an interest rate of 6.97% was credited to the transition cost account to be used as an offset in the future to stranded costs. For 1998, \$49.922 million at an interest rate of 6.76% for excess earnings was credited to the account. On June 16, 2000, the Commission determined that the 1999 amount to be credited to the account was \$17.532 million at an interest rate of 6.82%.

#### Docket No. 00-177-U

This docket was initiated by EAI on June 30, 2000 pursuant to a Stipulation approved in Docket No. 96-360-U. EAI's initial estimates in this proceeding of the level of stranded costs range from \$278 million to \$1.66 billion. The company states that the balance in the Transition Cost Account at May 31, 2000 is \$116 million. EAI is asking the Commission to continue funding of the Transition Cost Account pursuant to the existing tariff. AECC has intervened in this proceeding.

#### *Docket No. 00-048-R (Proceeding to Establish Filing Requirements and Guidelines for Preparing Market Power Analyses)*

This docket was initiated by the Commission in February to develop the filing requirements and guidelines that will be used by electric utilities to perform market power analyses as required by Act 1556. This is the first step in determining whether a utility has market power and, if so, the steps that should be

taken to mitigate that market power. General Staff filed proposed guidelines on March 28. A number of parties, including EAI, SWEPCO, the electric cooperatives, AEEC, Nucor-Yamato Steel, OG&E, and the Attorney General, filed comments regarding the Staff proposal April 14 and reply comments on May 9. A hearing on the appropriate guidelines is scheduled for June 1. The Commission released modified market power minimum filing requirements ("MPMFRs") on June 9, 2000, and invited comments on those modified MPMFRs. After further review of comments on the Commission's MPMFRs, an order on the guidelines utilities will follow in developing their market power analyses was released on June 27, 2000. Company-specific market power analyses will be filed with the Commission during the fall of 2000.

*Docket No. 00-054-U (A Proceeding to Determine If Metering, Billing,  
and Other Customer Services Are Competitive)*

The Commission initiated this proceeding on February 28, 2000 as authorized by the Act at §23-19-501(a). The Commission has asked the electric utilities and other interested parties to respond to a number of questions regarding the offering and availability of metering services, billing services, and other customer services. The Commission will determine if any of these customer services should be provided on a competitive basis and, if so, when the competitive offerings should be initiated. The Commission's decision in this docket will have an impact on other proceedings, such as the docket to develop the methods for the electronic exchange of information. The Staff, the Attorney General, Reliant Energy, Nucor-Yamato Steel Company, AEEC, and all electric utilities are parties to this docket. Comments responding to the Commission's questions were filed on March 31 and reply comments were filed on April 18. A hearing was held on the issues in this docket on May 10, 2000.

On May 17, the Commission issued Order No. 7 in this Docket finding that customer billing services may be competitive. In order to reach a final determination on the provision of these services, the Commission set this question for hearing on June 27, 2000. The Commission further found that although metering and other customer services may be competitive the provision of these services on such a basis is not necessary for effective retail open access. Consequently, a hearing on the provision of metering and other customer services, not including billing-related services, will not be set for further review at this time.

The Commission invited additional comments on its findings in Order No. 7. In addition, legal memoranda were also submitted by interested parties. Subsequent to the June 27 hearing the Commission, on June 30 issued an order finding that it is in the public interest for certain billing-related services to be provided on a competitive basis on the date of retail open access.

*Docket No. 00-067-R (Generic Proceeding to Establish Rules  
for the Electronic Exchange of Data)*

This docket was initiated by the Commission on March 10. The purpose of the proceeding is for the Commission to adopt rules to assure a seamless exchange of data electronically between providers of pertinent services for implementing retail open access. On March 22, Staff filed a “Motion to Bifurcate and Modify the Procedural Schedule”. In the request Staff recommended that, due to the amount of time it will take to implement the appropriate data processing systems for exchanging information, it is necessary to first adopt the appropriate technical mechanism. This will allow providers to begin work very soon in order to meet the implementation date of January 1, 2002. Staff offers that a second phase of this proceeding will address issues in other proceedings that will impact work involving the exchange of data between providers. On April 5, the Commission granted Staff’s Motion and modified the procedural schedule. For the first phase of this proceeding, the Staff filed its proposal on April 7. Parties participating in this docket include the Attorney General, AEEC, and all electric utilities including the electric cooperatives. Comments were filed by interested parties on April 28 with reply comments filed on May 19. A hearing is scheduled for June 6. On June 30, 2000, the Commission adopted the standards proposed by the Staff.

Comments on phase two will be filed on January 17, 2001 and replies will be filed on March 8, 2001. A hearing is scheduled for March 22, 2001 with an anticipated order by May 4, 2001 on phase two.

*Docket No. 00-097-R (Generic Proceeding to Establish Customer Education Guidelines)*

This docket was initiated by Staff on April 7, 2000, with the filing of a Petition and initial comments. Staff asked the Commission to approve its proposed guidelines and plan for statewide customer education regarding retail open access. The Commission invited comment on Staff’s proposal. Comments were received by parties including electric utilities, the electric cooperatives, AEEC, and the AG. A hearing on the issues was convened on May 16, 2000. On June 22, 2000, the Commission adopted the guidelines for a statewide customer education plan that were filed in compliance with Order No. 3 issued on June 9, 2000.

*Docket No. 00-148-R (Generic Proceeding to Establish Uniform Policies and  
Guidelines for a Standard Service Package)*

The Commission initiated this docket on May 26. The purpose of the proceeding is for the Commission to consider and adopt rules, pursuant to §23-19-402(a) of the Act, for the development of a standard service package to be offered by incumbent electric utilities that will be available for a period of time

after retail open access. Parties to the docket include all electric utilities, Staff, the Attorney General, AEEC, Reliant Energy, Nucor-Yamato Steel Company, Arkansas Western Gas Company, and Enron North America. The Staff filed its proposal on June 13, 2000. Parties to this docket filed comments on July 7, reply comments on July 21, and surreply comments on August 3. A public hearing on the issues in the proceeding will be held on August 8, 2000. The issues in the docket are currently under consideration by the Commission.

*Docket No. 00-185-R (Generic Proceeding to Establish Electricity Provider Rules)*

This docket was initiated by the Commission on July 11. Pursuant to §23-19-103(d), 23-19-401, and 23-19-502(c), the purpose of the docket is to develop the appropriate rules for distribution, rules for energy service providers and aggregators, and standards for reliability and customer protection. All electric utilities, Staff, the Attorney General, AEEC, Reliant Energy, Nucor-Yamato Steel Company, Arkansas Western Gas Company, and Enron Energy Services are parties to this proceeding. Staff will file proposed rules on October 10, 2000. Comments on the Staff proposal will file November 3 and reply comments will file November 20. A public hearing will be held on December 12, 2000.

*Docket No. 00-188-R (Generic Proceeding to Establish Uniform Reporting Requirements and Guidelines to Functionalize Customer Service Costs)*

The Commission initiated this docket, pursuant to §23-19-402, on July 18, 2000 after finding in Docket No. 00-054-U that certain specific billing functions competitive at the date of open access. Under the schedule in Timeline2, the Staff will file its proposal on August 31, 2000. Comments on the Staff proposal will file on September 11 and reply comments will file on September 25. A hearing in this docket to consider the issues has been scheduled for October 10, 2000. Parties to this docket include all electric utilities, Staff, the Attorney General, AEEC, Reliant Energy, Nucor-Yamato Steel Company, and Enron Energy Services. The Commission will endeavor to issue a final order on the issues in this proceeding by October 24, 2000.

*Docket No. 00-190-U (Proceeding to Develop a Progress Report to the General Assembly on the Development of Competition in Electric Markets)*

§23-19-107(a) requires the Commission to report to the General Assembly on the progress of competition in electric markets and the impact of competition and restructuring on retail customers. Act 1556 then describes the information that should be included in these reports.

On July 19, 2000, the Commission initiated this docket to receive comments on specific questions to

assist the Commission in making the first report required at §23-19-107. These include, among others, questions on anticipated rates for service from 2002 until 2010. Parties are to file their comments and responses to the Commission order by September 29, 2000. Reply comments will file on October 20 and a hearing will be held on October 26, 2000. Parties to this docket include the Arkansas Municipals, all electric utilities, Staff, the Attorney General, AEEC, Reliant Energy, Nucor-Yamato Steel Company, and Enron Energy Services.

### *Other Commission Proceedings During 2000*

The Commission will initiate a proceeding later this year to develop guidelines for interconnection to transmission and distribution facilities. *Timeline2* provides the dates for this proceeding. Furthermore, dockets for each utility will be opened during the fall to evaluate their market power filings.

Additionally, SWEPCO, OG&E, and Empire District Electric have filed a joint application with the Commission for approval of their proposal to become members of the Southwest Power Pool's ("SPP's") proposed Independent System Operator ("ISO") organization. Act 1556 requires that transmission-owning utilities submit the operation of their transmission systems to operation by an independent transmission organization if one or more such organizations have been approved by the FERC. Ark. Code Ann. §23-19-103(g). Act 1556 also requires that Arkansas utilities obtain the Commission's authorization before transferring control of their transmission facilities. Ark. Code Ann. §23-19-502(d). As discussed below, the SPP has filed an application at the FERC for approval of its ISO proposal.

### *Transmission Issues*

On December 20, 1999, the FERC issued a final rule, Order 2000, to facilitate the formation of Regional Transmission Organizations ("RTOs"). In the order, the FERC established a set of minimum guidelines that a transmission entity must meet in order to be considered an RTO. The order adopted a flexible approach that the FERC anticipates has the potential to: (1) improve efficiencies in the management of the national transmission grid; (2) improve transmission reliability; (3) remove potential opportunities for discriminatory transmission practices; (4) improve market performance; and (5) require less regulation. The principles adopted previously by FERC in Order No. 888 for implementing open transmission access were not designed to accommodate the current pace of electric restructuring by states, the divestiture of generating assets by electric utilities, the increase in mergers among electric utilities, the large number of new market



entrants into the market, and the increased use of the transmission network in unanticipated ways. In Order No. 888 the FERC endorsed, but did not mandate, the use of Independent System Operators ("ISOs") for insuring open access to transmission. FERC now states that transmission entities may develop into a number of different forms as restructuring occurs differently in different regions. The Commission filed comments in the proceeding generally supporting the FERC's efforts in promoting RTO development.

#### Entergy Transco

On April 7, 1999, Entergy Services, Inc. filed a petition at FERC for a declaratory order on its proposal to develop a "Transco" form of transmission entity as an Entergy affiliate. The Transco proposed by Entergy Services is defined as an affiliated transmission company that operates on a for-profit basis. This differs from an ISO, which is a non-profit entity that operates the transmission systems of its members, many of whom are for-profit utilities. The company asked the FERC to provide guidance on whether its Transco proposal complies with the FERC's principles regarding independence, governance and conflict of interest as set out in FERC Order No. 888. The Commission intervened in this proceeding.

On July 30, the FERC issued a Declaratory Order on the Entergy Transco in which FERC said that "passive ownership of a transmission entity by a generating company or other market participants could meet the ISO principles contained in Order No. 888, if the passive ownership proposal is properly designed, i.e., if the applicant demonstrates that the transmission entity is truly independent of the market participants." In particular, FERC stated that the company will need to adequately address how the proposed transco would address the process for selection and removal of board members and the fiduciary duties of the board. FERC also stated that Entergy should fully explain how the issue of securing an additional equity interest in the transco would operate from the perspective of the existing members of the transco, third parties, and the transco. In addressing other issues related to independence, the FERC noted that more detail would be required on arm's length contracts with member companies and how employees would move, if appropriate, between the transco and member companies. The APSC, the Louisiana Public Service Commission, and the City Council of New Orleans jointly filed a petition for rehearing of the FERC's order. All petitions for rehearing were denied on February 24, 2000.

#### Southwest Power Pool ISO

On December 30, 1999, the Southwest Power Pool ("SPP") filed a petition at the FERC for recognition as an ISO and RTO. Three Arkansas utilities were signatories to the agreement that is the

subject of that filing: SWEPCO, OG&E, and Empire District Electric. The Commission intervened in that docket, which is awaiting the FERC's decision. In addition, the Commission initiated Docket No. 00-010-U, for these three utilities to show cause why they are not in violation of Act 1556. The proceeding is ongoing.

On May 17, 2000, the FERC dismissed the SPP's petition without prejudice. The FERC stated that it welcomed the SPP's proposal but found that it was deficient in several respects. Those included: insufficient separation of transmission ownership and market participants; inadequate justification for its proposed transmission tariff; lack of a market-based congestion management system; and inadequate regional scope.

#### FERC Regional RTO workshops

The FERC has conducted five regional workshops to discuss ISO/RTO formation with utilities, state commissions, and other stakeholders. The Commission participated in workshops held in Kansas City on March 29-30 and in Atlanta on April 6-7.

#### Other Transmission Activities

The Arkansas Commission continues to be actively involved in discussions of transmission issues through the National Association of Regulatory Utility Commissioners ("NARUC"). Commissioner Bratton and Richard House, a member of the Commissioners' Staff, are NARUC representatives to two standing committees of the North American Electric Reliability Council. Commissioner Bratton has been appointed to represent the NARUC with the Market Interface Committee. This committee is established to review the impacts of certain reliability standards on commercial electricity markets. Mr. House has been appointed to the Adequacy Committee which will attempt to develop planning standards and adequacy of transmission resources.

#### *Tax Issues*

Act 1556 of 1999 requires that the Commission's Tax Division and the Department of Finance and Administration conduct a joint study of the possible financial impact of retail open access on county governments, municipal governments, and school districts, and consider ways to mitigate any significant adverse impact on these entities. In addition, the study is to address other related issues of public finance deemed relevant. The findings and recommendations of the joint study were submitted, via a report, to the General Assembly and the Public Service Commission on June 30, 2000.

On August 23 and November 19, 1999, representatives of the Tax Division, the Department of Finance and Administration, and other interested parties held meetings to discuss the possible impact of retail competition on municipal franchise fees, corporate franchise taxes, corporate income taxes, sales and use taxes, and ad valorem taxes (property taxes). Information gathered at these meetings was analyzed and a draft report outlining tax and fee issues, and possible recommendations was prepared. The draft report was made available for review by interested parties, prior to its submission to the General Assembly and the Public Service Commission on June 30, 2000.